COURT FEE भारत INDIA पांच रुपये FIVE RUPEES

COURT FEE भारत INDIA दस रुपये TEN RUPEES

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FILED

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

MISC. PETITION NO. 3714 /1991.

PETITIONER : Smt. Sakubai wd/o Natthu Tembekar through General Secretary, Dongargarh Bidi Majdoor Sangh, Kalkapara, Dongargarh, District- Rajnandgaon(M.P.)

VERSUS-

RESPONDENTS : 1. Appellate Authority Under Bidi & Cigar Workers(Conditions of Employment)Act, 1966 : Assistant Labour Commissioner, Raipur, Labour Division, Raipur(M.P.)

2. Manager, Gai-Chhap Bidi Karkhana; M/s. Chhotalal Keshavram, Dongargarh, District- Rajnandgaon(M.P.)

PETITION UNDER ARTICLES 226/227 CONSTITUTION OF INDIA.

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. No. 3714 of 1991

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Petitioner Smt. Sakubai

Versus

Respondents Appellate Authority Under Bidi & Cigar Workers (Conditions of Employment) Act, 1966 & another

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri H. B. Agarwal, Senior Advocate with Miss Sangeeta Mishra, Advocate for the petitioner.

None for the respondents.

ORDER

(30th November, 2006)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. The petitioner was employed by the respondent No.2 as Bidi binder. The terms and conditions of her employment were governed under the provisions of Bidi & Cigar Workers (Conditions of Employment) Act, 1966 (for short 'the Act, 1966').

2. According to learned counsel for the petitioner, the petitioner was dismissed by the respondent No.2 vide order dated 11.11.1980. Being aggrieved a dispute was raised before the appellate authority-cum Assistant Labour Commissioner under the Act, 1966. The appellate authority allowed the application of the petitioner with a direction to reinstate the petitioner in service. It appears, on perusal of the impugned order that the issue of grant of back wages was neither raised nor discussed in the impugned order. It appears that the petitioner has not laid down any pleadings of facts asto establish that the petitioner was not gainfully employed elsewhere. Thus, no finding

was recorded with regard to the grant of back wages and no order for payment of back wages was also passed.

3. Being aggrieved the petitioner has preferred this writ petition under Article 226/227 of the Constitution of India seeking a writ/direction to the respondent No.1 for payment of back wages, as consequential relief, flowing from the reinstatement of the petitioner in the service.

4. The position of law is well settled that the back wages cannot be granted as a natural and logical consequence of the reinstatement of the employee to the service. The petitioner has to establish that the petitioner was not gainfully employed elsewhere. Other factors namely the conduct of the petitioner, charges against the petitioner, burden on the employer, the period for which the back wages are sought for, have to be considered.

5. In the present case, admittedly, no foundation was laid with regard to the fact that the petitioner was elsewhere employed or not, gainfully. The petitioner was dismissed from the service on 11.11.1980 and the petitioner was reinstated to the service by virtue of the order dated 14.11.1990 passed by the appellate authority. The period of 10 years is involved in this case for which the petitioner is claiming back wages. However, in the facts of the case, when admittedly the petitioner remained out of job from 11.11.1980 to 14.11.1990 without his fault, on account of the illegal order passed by the employer, I am of the view that the interest of justice would be sub-served if the petitioner is declared as entitled to 50% of the back wages. I am fortified in my view by the decision of the Supreme Court in the case of **P.G.I. of Medical Education & Research, Chandigarh Vs. Raj Kumar** { (2001) 2 SCC 54} and **Allahabad Jal Sansthan Vs. Daya Shankar Rai and another** (2005 AIR SCW 2646).

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6. In view of the reasons made hereinabove, the petition is allowed to the above extent. The respondent No.2 is accordingly directed to make payment of 50% back wages to the petitioner. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur